In the High Court of Judicature at Madras

Dated: 13.12.2006

Coram:

The Honourable Mr.Justice M.E.N.PATRUDU

Writ Petition No.41002 of 2002
and
W.P.M.P.No.60687 of 2002

M.Chinnaswamy
S/o Marappa Gounder. ... Petitioner

Vs.

1. The State of Tamilnadu
   rep. by its Secretary to
   Government, Home Department,
   Fort St. George, Chennai-9.

2. The Director General of Police,
   Santhome, Chennai-5.

3. The Deputy Inspector General of
   Police, Villupuram Range,
   Villupuram District, Villupuram.

4. The Superintendent of Police,
   Villupuram District,
   Villupuram. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondents to pay the petitioner a sum of Rs.15 lakhs towards compensation for the death of C.Sundram, Sub-Inspector of Police, Chinna Salem Police Station, Villupuram District, who was killed in a shooting incident on 12.07.2000.

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For Petitioner .. Mr.S.G.Jeremiah

For Respondents .. Ms.C.K.Vishnupriya, G.A.

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O R D E R

In an unfortunate incident occurred on 12.07.2000, the son of the petitioner, who was working as Sub-Inspector of Police died in an accidental fire by their own police party.

2. The facts which are necessary for the disposal of the writ are:- Late Sri.Sundram, son of the petitioner is aged about 37 years and he has M.Sc. and M.Ed., and he was selected as Sub-Inspector of Police by the Respondents and trained and posted at Chinna Salem Police Station in Villupuram District.

3. On 12.7.2000, he along with the Inspector of Police Abdulla and another Sub-Inspector of Police Saravanan had gone to Nainapalayam in order to apprehend an accused in a case and the police party were armed with loaded weapons and the officers were carrying 9 mm pistols as usual. While the Sub-Inspector Saravanan who was unloading his 9 mm pistol there is a discharge of a shot accidentally and it has pierced into the left side neck of the deceased who was immediately taken to the nearby hospital, pronounced dead. Thus, the death of the deceased who is the son of the petitioner is totally accidentally. A case for an offence under Section 304A I.P.C. was registered in Crime No.515 of 2000 and an enquiry also was conducted by the Revenue Officials.

4. The grievance of the petitioner is that the Respondents did not discharge their statutory duties by giving statutory benefits to the petitioner and has sanctioned only a minimum pension of Rs.2600/- and Rs.1.00 lakh payable to all Government employees who die in harness. The contention of the petitioner is that his son died while he was on duty, and it is due to an accident and as per law of the land, the petitioner is entitled for compensation.

COUNTER:-

5. The Respondents filed a Counter affidavit, wherein the death of the deceased is admitted. It is also admitted that the deceased was working as Sub-Inspector of Police and it is also stated how the incident occurred. A police case was registered and in a Sessions Case No.172 of 2001 the said accused Sub-Inspector was convicted, but on appeal in the District Court the accused was acquitted. Be it may be the Respondents in para 6 stated that a sum of Rs.1.00 lakh has been paid to the petitioner's wife under the Family Benefit Security Fund Scheme on 4.10.2000 and it is as per the Government instructions. According to the Respondents totally a sum of Rs.1,49,933/- was paid to the wife of the deceased by name C.Muthammal and they are paying Rs.1,635/- as pension as sanctioned. The contention of the Respondents is that the deceased

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was working only as a trainee Sub-Inspector at the time of incident. In para 8 it is stated that the request of the wife of the deceased was sent to the Director General of Police for the sanction of Rs.1.00 lakh under Group Insurance Scheme. The Respondents contended that the claim of the petitioner to pay 15.00 lakhs is higher side and untenable and is liable to be rejected.

ARGUMENTS:-

6. Heard the arguments of both sides.

7. On behalf of the petitioner the Pay Certificate of the deceased is produced and accordingly the deceased was drawing Rs.7414/- as gross salary and after deductions his net salary is Rs.6,595/-. The Respondents did not dispute about the age of the deceased. Therefore, the deceased would have continued in service for a long period and he would have contributed to the family benefit, but for his untimely death.

8. In is no doubt that the incident is due to the negligence of the accused Assistant Sub-Inspector. This negligent act of the Assistant Sub-Inspector has caused purely to the family of the deceased Sub-Inspector, an adequate and effective care was not taken. Due to this gross negligence of the functionaries of the Respondents, the accused Sub-Inspector, the bread-winner of the deceased family has been snatched away by the cruel death of sudden act deprived him of his fundamental right under Article 21 of the Constitution. The sweep of Article 21 is wide and far reaching. It will undoubtedly cover a case where the State fails to discharge duty of care cast upon it resulting in deprivation of life and limb of a person. Right to life is not negotiable.

9. When there is a failure to perform duty which results in physical injury, deprivation of life or loss of property, Article 21 of the Constitution is attracted and the aggrieved party is entitled to invoke Article 226 to claim monetary or pecuniary compensation as such a remedy is available in public law based on strict liability for breach of fundamental right. In Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645, the Apex Court ultimately held that Article 21 acts as a shield against deprivation of life or personal liberty. Personal liberty and life have to be given expanded meaning. Though Article 21 is couched in negative terms, it also has a positive content. It contains a person's right to life and liberty. Concepts of life and liberty were purposely not defined in the Constitution so that expanded meaning could be given in accordance with the march of time.

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10. Dereliction of duty on the part of the servants of the State resulting in loss of precious life would amount to violation of Article 21 of the Constitution and the State will be vicariously liable for their acts. In P.A.Narayanan v. Union of India, 1999 ACJ 374 (SC), the Supreme Court in an appeal arising from a writ petition held that Dereliction of duty which results in loss of life renders the guarantee under Article 21 of the Constitution illusory. In the above case the widow lost her husband who was travelling in the railway compartment and the death is due to the acts committed by the dacoits and the deceased was railway employee performing his duty. In the circumstances the Supreme Court directed Railways to pay Rs.2,00,000/- as compensation to the family of the deceased.

11. Therefore, in the light of the above observation of the Supreme Court and in view of the fundamental rights guaranteed under Article 21 of the Constitution of India it should not be too late for the Courts to invoke its jurisdiction under Article 226 of the Constitution of India and direct for payment of compensation for the tortious acts of the functionaries and servants of the State.

12. In Nilabati Behra v. State of Orissa, 1993 ACJ 787 (SC), the Supreme Court has ultimately held that in a case of violation of fundamental rights by the State in its instrumentalities or servants the Court can direct the State to pay monetary or pecuniary compensation to the victim. Long ago the Supreme Court has laid down landmark and noteworthy principles in Bhagalpur Blindings Casses: Khatri (II) v. State of Bihar, (1981)1 SCC 627. The principle of sovereign immunity was inapplicable in these type of cases and a proceeding under Article 32 or 226 of the Constitution for award of compensation is a public law remedy as distinct from private law remedy; and the aggrieved party cannot be relegated to a civil suit. As observed by the Supreme Court in Nilabati Behra's case that the citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law.

13. In the famous words of Lord Denning in the First Hamlyn Lecture in 1949 in his own style warned:

> "'No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they

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ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new and up-to-date machinery, by declarations, injunctions and actions for negligence. This is not the task of Parliament, ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised, the new powers of the executive lead to the welfare State; but abused they lead to a totalitarian State. None such must ever be allowed in this country'."

14. In yet another landmark decision of the Supreme Court in D.K.Basu v. State of West Bengal, (1997) 1 SCC 416, the Supreme Court held as under:

"(43) Till about two decades ago the liability of the Government for tortious acts of its public servants was geneerally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In Nilabati Behra v. State of Orissa (supra), the decision of this court in Kasturilal Ralia Ram Jain v. State of U.P. AIR 1965 SC 1039, wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus:

"In this context, it is sufficient to say that the decision of this court in Kasturilal upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the Constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for

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contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this court in Rudul Sah, AIR 1983 SC 1086 and others in that line relate to award of compensation for contravention of fundamental rights, in the Constitutional remedy under Article 32 and 226 of the Constitution. On the other hand, Kasturilal related to the value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights, Kasturilal is, therefore, inapplicable in this context and distinguishable."

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim, civil action for damages is a long drawn and cumbersome judicial process.

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Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been breadwinner of the family."

15. In the instant case it is important to note that the Respondents have not disputed about the death of the deceased in an incident that occurred on 12.7.2000. It is also not disputed that the deceased was discharging his duty. So, while on an official duty the deceased sustained bullet injury discharged from the pistol of his colleague and it is purely due to the negligence of the said trainee Assistant Sub-Inspector. He has required to take such care as would be taken by a careful and a prudent police officer. So also the State owe duty to provide adequate care to prevent the chances of such injuries. Both the duties have not been performed by the authorities. But for the negligence of the accused Sub-Inspector, the deceased would have been alive. Therefore, the parents of the deceased are entitled for a reasonable compensation. I am conscious of the fact that money is not an adequate compensation for life. It cannot wipe the tears of the old parents of the deceased, but there is also no other mode to compensate them. This Court is informed that he is the only son and there are no other children to the petitioners.

16. In view of the aforesaid observations, I am of the opinion that the parents of the deceased should be compensated.

17. Taking his salary into consideration and the length of service and the age of the deceased and his health conditions, I direct the Respondents to pay a sum of Rs.7.50 lakhs as compensation to the parents of the Sundram the deceased Sub-Inspector of Police within two months from the date of receipt of copy of this order.

18. The compensation as awarded above shall be exclusive of other amounts which are due to the deceased and his family members which the State is bound to pay under the relevant service Rules irrespective of limitation to claim the same. The amount of the above compensation is liable to be paid excluding any amount awarded towards damages in a private law remedy. Out of Rs.7.50 lakhs the State is directed to recover at least Rs. 5.00 lakhs from the accused Assistant Sub-Inspector by name Saravanan who is instrumental for the death of the deceased. The Court is informed that the said accused Sub-Inspector is in service and he is working in the State services and got promotion also. Hence the State can initiate necessary action for the recovery of Rs.5.00 lakhs from the personal earnings of the said Saravanan and this Court do not intend

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to burden the Public exchequer. The balance of compensation i.e. Rs.2.50 lakhs shall be paid by the State as they cannot escape from the vicarious liability and if there is any rule to recover the same also from the accused Sub-Inspector the same is permissable.

19. Copy of this order shall be given to the petitioner as well as to the Respondents immediately so as to take immediate steps for payment of the compensation.

20. With the above observations, this writ petition is allowed. No costs. Consequently, W.P.M.P.No.60687 of 2002 is closed.

gr.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government,
   The State of Tamilnadu
   Home Department,
   Fort St. George, Chennai-9.

2. The Director General of Police,
   Santhome, Chennai-5.

3. The Deputy Inspector General of
   Police, Villupuram Range,
   Villupuram District, Villupuram.

4. The Superintendent of Police,
   Villupuram District,
   Villupuram.

1 cc to Mr.G.Jeremiah, Advocate, SR.62283

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